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(2006) 07 CHH CK 0038

In the Chhattisgarh High Court

Case No : Writ Petition No. 1894 of 2005

Saraswati Sahu and Another — APPELLANT

Vs

State of M.P. (Now C.G.) and Others — RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (2006) 2 CGLJ 334

Hon'ble Judges : S.K. Agnihotri, J

Bench : Division Bench

Advocate : Sameer Behar, for the Appellant; Ajay Dwivedi, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agnihotri, J.—This writ petition has been transferred to this Court on dissolution of the State Administrative Tribunal. Initially, this petition was filed before the State Administrative Tribunal at Jabalpur being Original Application No. 388 of 2000 on 27/01/2000. The main grievance of the Petitioners is that the impugned order dated 29/12/1999 (Annexure-A/1) is bad on account of the fact that the Petitioners have been removed from their service without affording any opportunity of hearing and further juniors to the Petitioners have been retained in the service.

2. The undisputed facts, in nut shell, are that Petitioner No. 1 was engaged to work on the post of Aaya by the District Women and Child Development Officer, Bilaspur vide order dated 23/04/1990 (Annexure-A/ 2) on daily-wage basis. Petitioner No. 2 was engaged to work on the post of Watchman by the District Women and Child Development Officer, Bilaspur vide order dated 02/08/1989 (Annexure-A/3) on temporary basis.

3. According to Shri Sameer Behar, learned Counsel appearing for the Petitioners, the Petitioners were appointed against the sanctioned posts as per the

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Memorandum dated 21/01/1964 (Annexure-A/5). Learned Counsel appearing for the Petitioners further submitted that since the Petitioners have been granted regular pay-scale by orders dated 05/12/1997 (Annexure-A/8) and 17/01/1996 (Annexure-A/9), respectively, they have attained the status of regular employee and their services cannot be terminated without following due process of law by affording opportunity of hearing to the Petitioner.

4. Shri Ajay Dwivedi, learned Panel Lawyer appearing for the Respondents/State, per contra, submits that the appointment of the Petitioners was temporary, not against the vacant posts. The appointment of the Petitioners was not in accordance with the constitutional scheme and as such, they have no right to be reinstated in service or to continue in service on the basis of grant of regular pay-scale.

5. Having heard learned Counsel for the parties and having perused the records appended to the writ petition and return, it is evident that the Petitioners were not appointed in accordance with the constitutional scheme as per the dictum of the Supreme Court laid down in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the appointment of the Petitioners was not in response to the advertisement by inviting applications from all the similar situated employees. The appointment of the Petitioners was without following the due procedure of law.

6. The Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has observed thus:

Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee....

7. Circular dated 18/11/1997 (Annexure-R/2G) provides that all the employees who have been appointed on daily-wage basis after 01/08/1989 without approval of the Finance Department be removed. Circular dated 21/01/1964 relied on by the learned Counsel for the Petitioner provides for continuance of temporary posts and not for creation of a post for appointment.

Thereafter, the services of the Petitioners were terminated by order dated 29/12/1999 (Annexure-A/1) in view of the Circulars dated 18/11/1997 and 27/03/1999. The Circular dated 27/03/1999 (Annexure-A/18) referred in the impugned order, stated that it was brought to the notice of the Government that some employees were getting regular pay-scale without their being appointed against the sanctioned posts. It was directed that payment of regular salary to

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such employees who were not appointed against the sanctioned posts, be stopped with immediate effect and disciplinary action be taken against the officers who permitted such payment of regular pay-scale. In compliance of the Circulars dated 18/11/1997 and 27/03/1999, the services of the Petitioners were discontinued with immediate effect.

8. Reliance of the Petitioners on order dated 05/12/1997 (Annexure-A/8) and order dated 17/01/1996 (Annexure-A/9) do not indicate that the Petitioners were confirmed on the posts. The said circulars simply provide for grant of regular pay-scale. Subsequent Circulars dated 18/11/1997 and 27/03/1999 issued by the Government to all the Departments, Divisions, Commissioners and Collectors clearly provide that the services of the employees, whose appointment was not against the sanctioned post and without the permission of the Finance Department, would be discontinued. It is clear indicative of the fact that the appointment of the Petitioners was not in accordance with law and contrary to the various circulars, as stated above, issued by the Government. Thus, the Petitioners have no right to the said posts and further they have no right to continue on the said posts.

9. The Supreme Court in the case of S. Naravana v. Md. Ahmedulla Khan and Ors. A.I.R 2006 SCW 2872 has further clarified the position relying on the earlier decisions of the Supreme Court, which reads thus:

... It is contended that regularization is the same as confirmation in service, and therefore, lien would operate from the said date. We are afraid that we cannot accept this contention in the face of clear authority to the contrary, to which we have already referred....

10. For the reasons stated above, the impugned order dated 29/1211999 (Annexure-A/1) cannot be held as illegal. Accordingly, this writ petition is dismissed. No order as to costs.

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